In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 339

JOE EDWIN MILLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

STATEMENT

After a jury trial in the United States District Court for the Southern District of Indiana, petitioner was convicted of knowingly possessing property stolen from interstate commerce, in violation of 18 U.S.C. 659. He was sentenced to imprisonment for one year and a fine of $2,500, the sentence of imprisonment to be suspended after two months were served with peti-

tioner to be placed on probation for the remaining ten months.[1] The court of appeals affirmed.

At a pretrial hearing on a motion to suppress, petitioner testified that on April 15, 1966, between 4:30 and 5:30 p.m., several F.B.I. agents arrived at his house in Indianapolis. Agent Cole showed his identification and introduced the other agents. Cole said that they understood petitioner had some television sets which had been stolen from an interstate shipment. Petitioner replied that he did have some television sets but, as far as he knew, they were not stolen. Cole asked to see them. Petitioner said "sure thing" and took them to the garage. After taking down the numbers on the cartons, the agents placed petitioner under arrest for possession of stolen goods (1 R. 7-8, 11-13). The agents were never threatening and were polite at all times (2 R. 22-24). Petitioner's wife gave substantially the same account of the agents' visit (1 R. 7-8).

F.B.I. agent Waldrop testified that he, Cole and two other agents went to petitioner's house on the day in question between 6:00 and 6:30 p.m. Prior to the visit the F.B.I. had learned of the disappearance of three Arvin color television sets and two RCA speakers from interstate shipments and had received confidential information from an informant that petitioner had some color television sets in his possession which he was trying to sell. Since the information about

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[1] The indictment and judgment of conviction are found in the unnumbered pages of Appellant's Appendix, hereafter referred to as "1 R.". The Appellee's Brief and Appendix is referred to as "2 R.".

petitioner had been received late in the afternoon and they were unable to reach a commissioner, they had gone without a warrant to petitioner's house. Petitioner invited them in. Cole warned petitioner of his rights and told him that they were investigating a theft from interstate commerce of color television sets and RCA speakers. When Cole asked petitioner if he had any of these items, he replied that he did, in his garage. He said that he had bought them from a man the previous night and asked if the agents would like to see them. As they were walking to the garage, petitioner said that, if they were stolen, he didn't know it and that they could look around all they wanted to, he had nothing to hide. Petitioner showed the agents five cartons, containing three Arvin color television sets and two RCA speakers. Stamped on the sides of the cartons were the addresses of the consignee and the sender (1 R. 1-5; 2 R. 14-20).

The court denied the motion to suppress, finding that petitioner had freely and intelligently consented to the search (2 R. 2-3).

The evidence at trial showed that on the night of April 14-15, 1966, the cartons later found in petitioner's garage disappeared from the parking lot of the ABC Forwarding Company in Indianapolis. The speakers were in transit from Indianapolis to Baltimore and the television sets from Columbus, Indiana, to Baltimore (1 R. 15-39). Co-defendant Bailey, who had pleaded guilty, testified that on April 14, 1966, he took the three color TV's and two RCA speakers, which he knew had been stolen, to the home of petitioner, whom he knew to be a buyer of stolen mer-

chandise. After some bargaining about price, petitioner bought them for a sum between $350 and $450. There was no bill of lading or shipping order for any of the items.[2]

ARGUMENT

The examination of the cartons in petitioner's garage was not a general exploratory search, but an examination of specific articles, made with the active assistance of petitioner. All the evidence, including that of petitioner himself, was to the effect that he freely and intelligently gave his consent thereto. Such a search is clearly valid. *United States* v. *Mitchell*, 322 U.S. 65, 70; *Gorman* v. *United States*, 380 F.2d 158 (C.A. 1); *Drummond* v. *United States*, 350 F.2d 983 (C.A. 8), certiorari denied *sub nom. Castaldi* v. *United States*, 384 U.S. 944; *Burge* v. *United States*, 332 F.2d 171 (C.A. 8), certiorari denied, 379 U.S. 883.

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[2] Petitioner, while denying that he knew the merchandise was stolen, again gave testimony as to the voluntariness of his consent to the search. He stated that on the day in question his little girl looked out the window and said that the insurance man was coming. Petitioner answered the door and met Cole, who identified himself and the other agents, who in turn showed their credentials. Cole said they understood that petitioner had some TV's stolen from an interstate shipment. Petitioner said that he did have some TV's but that they were not stolen. When the agents asked if they could see them, he said "Sure" and took them to the garage. They checked the serial numbers. One of the boxes was already open and they lifted one set out. Petitioner was not sure whether he helped them to do this or not. Cole asked petitioner if he wanted to make a statement and he said, "Sure, I'll do anything to help catch this guy." (1 R. 87-90).

The court of appeals—which discussed petitioner's other contention in some detail—properly held, without a prolonged discussion, that the evidence sustained a finding of guilt. The direct and positive testimony of co-defendant Bailey was alone sufficient for this purpose. It was corroborated by petitioner's possession of the recently stolen property and the admitted circumstances of its acquisition, which, to say the least, would be quite unusual for a *bona fide* transaction. While, contrary to petitioner's assertion, it was not necessary for the government to prove that petitioner knew the property was stolen from an interstate shipment, see *Pagliano* v. *United States*, 348 F.2d 902 (C.A. 1), the fact that the addresses of the consignor and consignee were stamped on the cartons did provide such proof.

In view of the lack of substance to petitioner's contentions, the fact that the court below wrote a three and one-half page opinion does not support his charge that the court of appeals ignored his 150-page brief. Indeed, the opinion itself shows that the court did consider the various contentions that he raised. Thus, there is no basis for petitioner's charge that the court discriminated against him because he was poor by not considering his brief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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